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FROM U.S. MISSION TO THE UN AGENCIES IN ROME

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SUBJECT: PLANT GENETIC RESOURCES: MATERIAL TRANSFER  
AGREEMENT EXPERT GROUP TO MEET 4-8 OCTOBER 2004

REF: (A) ROME 1417; (B) ROME 1057;  
(C) ROME 0280

**¶1.** Summary: The Expert Group on the Terms of the Standard Material Transfer Agreement (MTA) will hold its first meeting on 4-8 October in Brussels, hosted by the European Commission (EC). The standard MTA will specify the terms for access and benefit sharing under the multilateral system envisioned in the International Treaty (IT) on Plant Genetic Resources for Food and Agriculture. The work of the Expert Group is therefore crucial, since the IT cannot be implemented fully until the standard MTA is agreed. Officials at the FAO Secretariat (which also serves as secretariat to the IT)

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outlined their preparations for the meeting and procedural issues that need to be addressed. They believe that the Expert Group's first tasks include bringing new delegates up to speed and building North-South confidence. End summary.

**¶2.** According to its Terms of Reference (TOR), the Expert Group "shall develop and propose recommendations, which may be considered by the Interim Committee for the Treaty, on the terms of the standard MTA, in accordance with Article 12.4 of the IT." The Group is also asked "to provide advice and, where appropriate, propose options and/or elements for inclusion in the standard MTA" on various topics. These include, inter alia, the level and form of payments, whether to exempt small farmers from developing countries or transitional economies from payments, what constitutes "commercialization" under the IT, what constitutes "incorporation" of material, etc.

**¶3.** In the past several months, U.S. Mission has held periodic discussions on arrangements for the upcoming MTA Expert Group meeting with Jose Esquinas-Alcazar, Secretary of the FAO Commission on Genetic Resources for

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Food and Agriculture, most recently on 9 August. We raised a number of practical and procedural questions, and sought the Secretariat's views on the meeting more generally. Key points of the discussion are reviewed below.

**¶4.** EC Support: On 15 July, the EC Directorate General for Health and Consumer Protection (SANCO) formally offered to host and pay for the MTA meeting on 4-8 October and preparatory meetings of developing-country delegations on 1-3 October. FAO Director General Diouf accepted the EC offer in a letter signed 10 August. The EC and FAO Secretariat have been working out a memorandum of understanding (MOU) that spells out the details. Once the MOU is approved and an agreement with the Belgian government regarding privileges and immunities is finalized, FAO will be able to issue invitations to the meeting. The MTA meeting was to have been held in 2003, but had to be rescheduled several times for lack of sufficient voluntary contributions. With the EC's offer and other contributions in the pipeline, Esquinas is now confident that FAO will have adequate resources for all IT-related meetings programmed for CY 2004.

**¶5.** U.S. Contribution: As instructed by USDA, U.S. Mission informed FAO on 28 July that the USG contribution of approximately \$50,000, originally earmarked for the first MTA Expert Group meeting, could be used for other IT-related events if -- as is now confirmed -- the MTA meeting is fully funded. We added the stipulation that the contributions of the USG and other donors to the IT process should be recognized explicitly at the MTA meeting.

**16. Participation of Advisors and Observers:** We asked about the possibility of attendance of additional advisors and observers, in addition to the two experts and two advisors from North America region specified in the TOR. Esquinas said that the FAO Legal Office understands the TOR to mean that this is a restricted meeting, and no others may be present in the meeting room. The Legal Office has determined, however, that it would be acceptable for an advisor's seat at the table to rotate among several individuals, but only one of them could be physically present at any one time.

**17. Participation - Continued:** Esquinas pointed out that

the matter of representation on the MTA Group had been contentious at the first Interim Committee (IC) meeting, and the numbers were arrived at after long negotiations. In particular, developing countries feared that, in the absence of strict limits, the wealthier governments could pack the MTA with their own experts. Therefore, any decision by the Secretariat that would appear to deviate from the numbers set in the TOR would not only be legally questionable, but would raise serious political difficulties. Even the Legal Office's ruling on the possibility of rotating advisers may raise some eyebrows or hackles, Esquinas thought. Against this background, FAO's acceptance of the EC offer to host the first MTA meeting also is somewhat controversial. As for the presence of industry observers, that was discussed at the IC, but no conclusion was reached other than the statement in the TOR that "advisors may include, inter alia, representatives from government, industry, academia and civil society."

**18. International Organizations:** Regarding participation of international organizations, even the Convention on Biological Diversity secretariat is not included in the list of Expert Group members spelled out in the TOR. Only the Consultative Group on International Agricultural Research (CGIAR) may nominate a representative. The World Intellectual Property Organization (WIPO) and the International Union for the Protection of New Varieties of Plants (UPOV) may only do so upon the request of the Expert Group.

**19. U.S. Expert:** We informed the Secretariat, on instructions from USDA, that the U.S. expert at the meeting would continue to be David Hegwood, who, effective 17 August, will become Minister Counselor and Alternate Permanent Representative at U.S. Mission Rome. We explained that no final decision had been taken on the occupant(s) of the single U.S. advisor slot.

**10. List of Experts:** Esquinas said that the Latin American and Caribbean Regional Group (Grulac) has not yet designated its four experts. He is reluctant to release the list of experts and advisors until it is complete. He added, however, that he will not allow the Grulac's indecision to hold up preparations for the meeting. Once the invitation letter is ready, FAO will send it out to the experts designated by each region, and, if there are no designees, to the permanent representation heading the relevant regional group.

**11. Selection of a Chairman:** Esquinas said the Secretariat is concerned that deciding on a Chairman for

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the Group could end up using up a lot of substantive negotiation time. According to the FAO Legal Office, the Chairman should be one of the experts, but the problem is that most of the experts are likely to want to participate actively in the debate. It would be difficult to find someone who would be both knowledgeable about the issues and sufficiently detached from them to serve as an impartial moderator. An "ideal" solution would be for the Chair of the IC, Fernando Gerbasi, to serve also as Chair of the Expert Group, but the latter's availability is not certain. Esquinas expressed cautious optimism that, once the full list of experts is available, a suitable candidate for chair will appear among them, and that this could be agreed informally in advance of the October meeting.

**12. Flexibility:** Esquinas noted that, although the Secretariat has to take a strict-constructionist view on

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matters of procedure, the Expert Group itself is sovereign. If the Group decides on a course of action (on, say, the selection of a Chair) by consensus and no member of the Group questions it, then the matter rests. We take this to mean that the FAO Legal Office would not of its own accord quibble with procedural decisions made by the Expert Group if it is not asked for its opinion.

¶13. First Steps: According to Esquinas, not all of the experts nominated thus far by other regions are knowledgeable about MTA issues. There will therefore be something of a learning curve to bring the newcomers up to speed. Esquinas' expectations for the first MTA Expert Group meeting are modest. He sees confidence-building between North and South as an essential first

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step.

¶14. U.S. Mission Comment: The negotiation and entry into force of the IT was a significant achievement, but this was made possible in large part because the treaty provides only a framework, leaving key contentious issues such as the content of the standard MTA to other groups. Now for the diabolical details. Knowledgeable officials at the FAO Secretariat clearly believe that the upcoming meeting of the MTA Expert Group will need to do considerable groundwork in education and confidence-building before they can even begin to tackle those essential details.

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